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conceit though accepted for a time by Lord Coke was later definitely repudiated by him. *Blamford v. Blamford*, 1 Roll. R. 318, 321. Lord Chancellor Nottingham, too, said it had no basis in law. *Duke of Norfolk's Case*, 3 Ch. Cas. 29. In the middle of the eighteenth century, about eighty years after Lord Nottingham had settled the matter, the theory that successive remainders for life are invalid was first mentioned as an independent rule, *Spencer v. Marlborough*, 3 Bro. P. C., Toml. ed., 232. Lord Northington, however, admitted that he searched in vain for any reason for it as an independent rule. He did not refer it to Popham's doctrine. It is first traced to that doctrine by Lord Mansfield in *Chapman v. Brown*, 3 Burr. 1626, 1634. It received its strongest support in opinions by Mr. Booth and Mr. Yorke given in private practice. 2 CAS. & OP. 432, 435, 440. Mr. Williams at first did not accept the view. WILLIAMS, REAL PROP., 1st ed., 211, 212; but later adopted it. See WILLIAMS, REAL PROP., 3rd ed., 227, 406. Without further authority the Court of Appeal made the rule law in *Whitby v. Mitchell, supra*. It is submitted, then, that the rule has no sound basis in the law, for if it be considered that Lord Nottingham found it entirely without reason, and Lord Northington eighty years later searched in vain for reason for what he considered an independent doctrine, it seems impossible to contend successfully that the rule is older than the rule against perpetuities and that it has existed side by side with it. See GRAY, *supra*, §§ 125-134, 191-199, 285-298.

The idea that the creation of contingent remainders was not governed by the ordinary rule of remoteness seems to have been due to the fact that the danger of perpetuity was first felt in connection with executory limitations which were indestructible and which for a time furnished most of the cases. But, though the destructibility of contingent remainders may have kept questions of remoteness with regard to them from arising, it furnishes no sufficient reason for exempting the creation of them from the ordinary rule. See Gray, *supra*. Other circumstances that led to the idea that the creation of contingent remainders was outside the rule against perpetuities, were the fact that remainders are common law interests, and the belief that the rule was called into existence by the enactment of the Statute of Uses and the Statute of Wills. This, too, has been shown to be incorrect, for executory limitations of chattels real were known to the common law; and it was in connection with bequests of such interests that the rule against perpetuities was established. See GRAY, *supra*, § 296.

Since the rule against perpetuities governs all contingent equitable limitations, and all contingent limitations of personality; and since contingent remainders are now by law indestructible, it seems highly desirable that the creation of contingent legal remainders should be subject to that rule, particularly as there is no large body of precedent to be overturned in order to establish the symmetry of the law.

**RIGHTS IN PERCOLATING WATERS.** — It seems to be the general opinion that the law of percolating waters, though of recent development, is fairly well settled in accordance with the leading English case of *Chasemore v. Richards*, 7 H. L. Cas. 349. See GOULD, WATERS, § 280. It is interesting therefore to note in connection with a recent California case how entirely without support the English decision seems to be in the United States, and

how unanimous the few American cases have been in following a more equitable rule—a rule denying that the owner of land has an absolute property in the percolating water beneath it. *Katz v. Walkinshaw*, 70 Pac. Rep. 663.

The doctrine that the owner of land owns percolating water as he owns the rocks *usque ad infernos*, as it is said, grew out of the necessity of allowing him to drain, mine, or otherwise use his land even though the use should interfere with percolating waters; for since such waters are unseen and may underlie the whole soil, all use of the land might otherwise be prevented. But the rule as stated and applied, not only involves the inconsistency of allowing A, by digging on his own land and taking water from B's, to convert what it calls B's property, but also is open to the objection that it gives rise to a right greater than is necessary to secure to the owner the entire use of his land. There being a necessity to give him only a right to interrupt the water, it gives him an absolute right to the water itself. A good example of the injustice which may follow appears in the facts of a New York case where a city bought two acres in the midst of a farming district and completely ruined the lands in order that it might have water to sell. See *Forbell v. City of New York*, *infra*. The English rule in such a case would have given no relief. On the whole, therefore, it would seem better to hold to the general rule of waters and say that there can be no absolute property in percolating water. A careful reading of the decisions, neglecting *dicta*, would seem to show that percolating water may be *interrupted* by any act of the owner in the use and enjoyment of his property. *Acton v. Blundell*, M. & W. 324; *New Albany R. R. Co. v. Peterson*, 14 Ind. 112; *contra*, *Bassett v. Salisbury Manufacturing Company*, 43 N. H. 569. But that it may not be *used* except according to the usual law of waters. *Forbell v. City of New York*, 164 N. Y. 522; *Smith v. City of Brooklyn*, 46 N. Y. Supp. 141, 160 N. Y. 357; *Katz v. Walkinshaw*, *supra*. These cases confine the use of the water to use on the land and are believed to be the only American cases on the point. The English law, as has been said, is *contra*.

When the underground water flows in a defined and known course, the law universally holds that it may not be interrupted. See GOULD, *WATERS*, § 28. But when its course though defined is not known, the rule is the same as for percolating waters; the reason being that since these streams are unknown an owner digging in his own land cannot avoid interfering with them, and if such interference were held actionable many uses of land would become perilous if not impossible. The decisions therefore clearly allow him to *interrupt*. *Haldeman v. Bruckhart*, 45 Pa. St. 514. But although the argument for a different rule as to *use* is even stronger here, the English courts are consistent and refuse to recognize it. They seem to have no hesitation in allowing an owner to hunt for the source of his neighbor's spring and pipe it all off to the latter's damage. *Bradford Corporation v. Ferrand*, [1902] 2 Ch. 655. An American decision, however, is apparently *contra*. *Burroughs v. Satterlee*, 67 Ia. 396.

This view that percolating water may be interrupted by any enjoyment of the land, but may not be used except in a reasonable manner, has, it is believed, the merit of securing the use of the land to its owner, and the use of the water, so far as is practicable, to all whose land it touches.